

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In Re: The Denial of the  
License of Lena Kasheimer,  
6641 Elmwood Drive  
FACT,  
Rockford, Minnesota 55373,  
AND  
to Provide Family Day Care

FINDINGS OF

CONCLUSIONS

RECOMMENDATION

Under Minn. Rules Parts  
9502.0300 to 9502.0445.

The above-entitled matter came on for hearing before  
Administrative Law  
Judge George A. Beck, at 10:00 a.m. on September 25, 1990, in  
Conference Room  
B, Fourth Floor, Courthouse Annex in the City of Buffalo,  
Minnesota. The  
record in this matter closed on the date of the hearing.

Brian J Asleson, Assistant Wright County Attorney, Courthouse,  
Buffalo,  
Minnesota 55313, appeared on behalf of the Wright County  
Human Services  
Department. Lena Kasheimer, 6641 Elmwood Drive, Rockford,  
Minnesota 55373,  
appeared on her own behalf.

This Report is a recommendation, not a final decision.  
The Commissioner  
of the Minnesota [Department of Human Services will make the  
final decision  
after a review of the record which may adopt, reject or modify  
the Findings of  
Fact, Conclusions, and Recommendations contained herein.  
Pursuant to Minn.  
Stat. 14.61, the final decision of the Commissioner shall not  
be made until  
this Report has been made available to the parties to the  
proceeding for at  
least ten days. An opportunity must be afforded to each  
party adversely  
affected by this Report to file exceptions and present  
argument to the  
Commissioner. Parties should contact Ann Wynia,  
Commissioner, Minnesota  
Department of Human Services, 444 Lafayette Road, St. Paul,  
Minnesota 55155, to  
ascertain the procedure for filing exceptions or presenting argument.

#### STATEMENT OF ISSUE

The issue in this contested case proceeding is whether or not the Applicant is in compliance with Minn. Rule 9502.0335, subp. 6E and F , and should therefore be issued a family day care license.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. On February 24, 1988, the Applicant was providing day care for Michelle Grieger, the 2-year-old daughter of Perry aid Kathy Grieger of

Rockford, Minnesota. When Kathy Grieger picked up Michelle from Ms. Kasheimer's home on the eveing of February 24, Ms. Kasheimer stated that she had spanked Michelle for going potty in her pants and that there might be some bruises. Ms. Kasheimer also told Mrs. Grieger that she had had Michelle on the potty for three quarters of an hour to an hour. (Ex, 2).

2. Mr. and Mrs. Grieger took Michelle to Dr. Jacqueline Teunissen-Myers on February 25 1988. Dr. Teunissen-Myers' examination disclsed bruises on the left thigh which formed an exact 90-degree angle as if she had been hit in the thigh with a square object such as a book or a board. (Ex. 1).

3. After interviewing Mr. and Mrs. Grieger on March 21, 1988, investigator Brooks Martin of the Wright County Sheriff's Department interviewed the Applicant. Ms. Kasheimer admitted to investigator Brooks that she had struck Michelle twice on the buttocks or thigh area with an open hand while the child was standing in a vertical position. Ms. Kasheimer stated that she had the flu ttat day, had to get out of bed, and had probably "lost her cool." She also told investigator Brooks that she had put Michelle on the potty chair and forgotten about her and that she was there for about 45 minutes. (Ex. 2).

4. At the time of this incident the Applicant was providing day care for seven children from five families with three of the children being full-time and four part-time. She was not licensed to provide day care. (Ex. 2),

5. Ms. Kasheimer was subsequently charged with fifth-degree assault, a violation of Minn. Stat. 609.224, in Wright County District Court. (Ex. 6).

6. On April 6, 1988, Ms. Kasheimer pled guilty to fifth-degree assault. The disposition by the court was a continuance of the matter for dismissal for one year provided there were no same or similar incidents during the one-year period. Ms. Kasheimer was directed to pay court costs of \$50. The court minutes also reflect that she was directed to get a valid day care license.

(Ex. 5).

7. Ms. Kasheimer did subsequently apply for a day care license, however, her application was denied because she had admitted spanking and bruising a child to whom she was providing unlicensed day care and had been convicted of assault in the fifth degree in connection with the incident. (Ex. 4).

8. On March 14, 1990, Mr. Kasheimer reapplied for a day care license in Wright County. She had decided to return to day care work after being laid off from a job with a printing company. Ms. Kasheimer's understanding of the court disposition was that if she successfully completed her probation she would be eligible to reapply for a day care license.

9. The Applicant acknowledged at the hearing that the day care licensing rules prohibit spanking and stated that she believes that she could comply with the rule.

10. By a letter dated June 22, 1990, the Department of Human Services denied Ms. Kasheimer's application for a family day care license based upon the incident described above. In regard to the 1990 application, Wright County did do a criminal check which did not disclose anything beyond the 1988 assault conviction. (Ex. 3).

11 The Applicant made a timely request for an appeal hearing in this matter. On July 11, 1990, the Department of Human Services issued a Notice of and Order for Hearing setting the hearing in this matter for September 25, 1990 .

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 245A.01 and 14.50.

2. The Notice of and Order for Hearing in this case was proper and all relevant substantive and procedural requirements of law or rule have been satisfied .

3. That Minn. Stat. 245A.04 provides that the Commissioner shall issue a license only if the applicant complies with all applicable rules and laws and directs the Commissioner to apply the disqualification standard set forth in rules.

4. Minn. Rule 9502.0335, subp. 6 provides, in part, as follows:

Subp. 6. Disqualification factors. An applicant or provider may not be issued a license or the license shall be revoked, not renewed or suspended if the applicant, provider, or any person living in the day care residence or present during the hours children are in care, or working with children:

E. Has had a conviction of, admitted to, or there is substantial evidence indicating incest (as prohibited in Minnesota Statutes, Section 609.365), or physical abuse, sexual abuse, or neglect (as those terms are defined in Minnesota Statutes, Section 626.556).

or  
the  
or  
Conviction,  
the  
state  
(Ex. 7).

F. Has had a conviction of, has admitted to,  
there is a preponderance of the evidence indicating  
commission of any crime listed in Minnesota Statutes,  
Chapter 152 and sections 609.18 to 609.21 or 609.221 to  
609.378, 609.556 to 609.563, 609.66 to 609.675, 617.23  
617.246, other than those listed in item D.  
admission, or a preponderance of evidence indicating  
commission of a crime or similar crime in another  
or a national jurisdiction shall also be grounds for  
license denial, revocation, nonrenewal or suspension.

5. Minn. Stat. 609.224 - assault in the fifth degree --  
provides, in  
part, as follows:

Subdivision 1 Misdemeanor. Whoever does any of the following commits an assault and is guilty of a misdemeanor:

(2) intentionally inflicts or attempts to inflict bodily harm upon another.

(Ex. 9).

6. Minn. Stat. 626.556, subd. 2(d) defines "physical abuse" as meaning  
.any physical injury inflicted by a person responsible for the child's care on  
a child other than by accidental means, or any physical injury  
that cannot  
reasonably be explained by the child's history of injuries or any  
aversive and  
deprivation procedures that have not been authorized under section 245.825."

7. That the burden of proof in this proceeding is upon the Applicant to  
demonstrate compliance with all applicable rules and laws.

8. That the Applicant has been convicted of and there is substantial  
evidence indicating physical abuse of a child who was in her care.

9. That the, Applicant was convicted of and admitted to a violation of  
Minn. Stat. 609.224, subd. 1(2).

10. That the Applicant failed to prove by a preponderance of the evidence  
that she is in compliance with Minn. Rule 9502.0335, subp. 6E. and F.

11. That the above Conclusions are arrived at for the reasons set out in  
the Memorandum which follows.

Based upon the foregoing Conclusions, the Administrative Law Judge makes  
the following:

#### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Human Services  
deny the application of Lena Kasheimer to provide family day care.

Dated this 2nd day of October, 1990

GEORGE A. BECK  
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required  
to serve



its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped. Tape No. 9410.  
No Transcript Prepared.

#### MEMORANDUM

The position of Wright County Human Services in this matter is that the 1988 incident described in the Findings of Fact precludes licensure of the Applicant under the statute and rules quoted in the Conclusions. Ms. Kasheimer again admitted the incident at the hearing but stated that she didn't believe that she had spanked the child that hard. She testified that she was seeking to return to day care after being laid off from her employment.

She stated that she wanted to return to day care in order to pay her bills and also because she likes to see children grow up. She testified that she understood that spanking was not permissible under the licensing rules and that she would be able to comply with this rule in the future.

The Applicant believed she would be eligible for licensure after her one year probation period. Although the record does not indicate whether a formal dismissal of the misdemeanor charge has been filed with the court, it presumably could be done since it is admitted that there were no similar incidents within the one year period of probation which is now expired. Nonetheless, the Commissioner is obligated to examine the facts of the underlying incident despite the dismissal in determining whether or not to issue a day care license.

The statute and rules do not permit the Applicant to be licensed. The incident of physical abuse in this case is a serious one which evidences a lack of control on the part of the Applicant. There is no doubt that the Applicant struck a two-year-old child in her care because of a potty accident. Although the Applicant admitted only to using an open hand, the examining physician

thought that the bruise was consistent with the child being struck with a square object.

Considering the seriousness of the incident, considering the fact that it occurred while the Applicant was operating an unlicensed day care, and since it appears that the Applicant's reasons for returning to day care are primarily economic, it is concluded that the appropriate disposition of this matter is a denial of the application. The Applicant did not prove compliance with the rules or demonstrate any rehabilitation since the time of the incident.

G.A.B.